

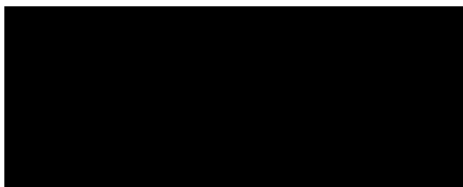


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:



Office: Vermont Service Center

Date:

JAN 10 2000

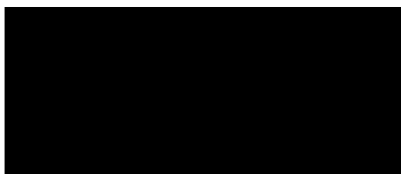
IN RE: Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert W. O'Reilly

For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a not-for-profit theater group which seeks to employ the beneficiary as a dance and language instructor. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The beneficiary is a griot, a traditional West African storyteller. The petitioner's initial submission consisted primarily of untranslated media articles and documentation of the beneficiary's

performances. In response to a request for further evidence, the petitioner submitted further articles and letters from witnesses.

The director denied the petition, stating that while the petitioner has established that the beneficiary is an accomplished artist who has performed in several countries, it does not necessarily follow that the beneficiary enjoys national or international acclaim as a top artist in her field.

On appeal, the petitioner submits further evidence, which for the first time counsel has organized according to several regulatory categories. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

A letter in the record indicates that the beneficiary is a member of [REDACTED] the Composers and Authors Society based in Paris, France. The record contains no documentation directly from [REDACTED] to establish the beneficiary's membership, or [REDACTED] membership requirements. The only [REDACTED] documentation in the record is a circular which urges opposition to the Multilateral Agreement on Investment, an international treaty which French artists viewed as a threat to their creative freedom. While one could infer the beneficiary's membership in [REDACTED] from her receipt of this document, it does not set forth [REDACTED]'s minimum requirements for admission into membership.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The record contains a number of translated newspaper articles, but counsel does not claim on appeal that the petitioner has satisfied this criterion. The record contains no evidence that the publications which featured these articles consist of major media, with substantial national or international circulation. (Merely local publications, or publications which circulate only a small

number of copies, cannot establish widespread national or international acclaim.) The petitioner has established that the beneficiary has been the subject of media attention, but the extent of this coverage is not clear from the documentation of record. The record does not show that the beneficiary has attracted more media attention than almost all other actors in Mali.

The beneficiary had been in the United States for nearly a year and a half when the petitioner filed the petition, yet the record does not indicate that the beneficiary had garnered any media attention during that time. During the time that the beneficiary has been in the United States, the beneficiary's acclaim must be judged against other actor/entertainers in the United States, rather than other griot/West African storytellers in the United States.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner has submitted a number of witness letters. Professor [REDACTED] of [REDACTED], who has "published 3 major books on African, African American and Caribbean Cinema," states that the beneficiary "is without any doubt one of the leading and most accomplished professionals in the area of acting and performance in cinema, television and theater" and that the beneficiary "is also recognized for her own one-woman performance of the epic story of Sundiata, the legendary 13th century founder of the great empire of Mali."

Christopher Winks, Managing Editor of Black Renaissance/Renaissance Noire, "a Pan-African journal of culture and politics published by the Africana Studies Program at [REDACTED]" asserts that the beneficiary is "one of Mali's most distinguished actresses and performers."

[REDACTED] Director of [REDACTED] states that the beneficiary "is a great star well known all around Africa." [REDACTED] Director of [REDACTED] for the United Nations Development Program, states that the beneficiary "has gained much fame and prestige."

Several witnesses have singled out the beneficiary's solo show L'Épopée Mandingue as a significant contribution to the African stage. The Dictionary of Famous Women of Mali indicates that the beneficiary is "the most senior and famous actress of Malian cinema." Significantly, the witnesses do not include any actual figures in the West African entertainment community; the witnesses are academics and journalists based in Europe and the United States.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel asserts that the beneficiary's performances on stage and film satisfy this criterion. The very nature of performing arts, however, involves the "display" of one's work, either live or recorded, before an audience. A separate criterion, below, addresses the performing arts as distinct from the visual arts.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the beneficiary has satisfied this criterion through her involvement in five activities, discussed below.

Documents in the record discuss the International Day of Francophony, a celebration of French-speaking cultures. The event took place in [REDACTED] in 1997. The news article discussing the event mentions several presentations celebrating [REDACTED] and states that the culture's history "was the subject of a performance by [the beneficiary] and a contribution from the famous [REDACTED]. The article did not deem the beneficiary to be a "famous griot," or indicate that her performance was a cornerstone of the Belgian event. Rather, it appears that Mandinka culture was focal to the news article (rather than the International Day of Francophony itself) because the article appeared in an African periodical.

Counsel states that the beneficiary played a key role in "Women on Their Feet: The Future of Africa," described in a newspaper article as "a week of discussion." It is not clear from the available documentation whether "Women on Their Feet" was a general national event or simply a forum arranged by the newspaper carrying the article in question. While the beneficiary participated in this discussion by answering five questions, there is no indication that her role was any more significant than that of any other participant. Furthermore, the record does not indicate that this discussion panel constituted an organization or establishment with a distinguished reputation.

Another news article in the record indicates that the beneficiary gave a special performance for U.S. film director Spike Lee. The record does not offer enough information about this one-time event to allow this office to conclude that the beneficiary played a key role for any distinguished organization or establishment. The presence of noted celebrities such as Mr. [REDACTED] does not automatically lend distinction to such events.

Counsel asserts that the beneficiary played a leading or critical role for the Informational and Project Service. The beneficiary's

only connection to this vaguely-described entity is a surprise visit which the beneficiary paid to its offices in February 1997.

The beneficiary conducted a workshop at the Third Women's Voices Festival, Liege, Belgium, which spanned the two weeks surrounding New Year's Day, 1996. As with other events, the beneficiary has shown that she participated in the event, but there is no indication that she played a leading role in its planning or execution, or that she was a principal attraction at this international event.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The record contains promotional materials and programs from performances by the beneficiary, but such evidence shows only that the performances took place. It does not demonstrate that the beneficiary has enjoyed a level of commercial success which is demonstrative of extraordinary ability.

The beneficiary has appeared in several films, including Le Medecin de Gaffire, Black Mic Mac, Le Feu dans le Sang, Mamy Wata, Falata and Sarka Bo. The record does not establish the commercial success of these films, or that the beneficiary played major roles and was otherwise responsible for the success of the films. While witnesses have asserted that these motion pictures were "major films," the wording of the regulatory criterion calls for "box office receipts or . . . video sales," and makes no allowance for the substitution of general witness statements. While first-hand evidence of the beneficiary's commercial success should, arguably, be readily available, the petitioner has not produced such evidence.

The petitioner has produced statements from prominent witnesses, to the effect that she is one of Mali's most famous performers. The record does not, however, contain substantial objective evidence to support that conclusion. The petitioner has relied mostly on statements solicited especially for this petition, and previously existing evidence which demonstrates that the beneficiary enjoys some degree of recognition but does not consistently show that the beneficiary is a top entertainer internationally or in any one country. The evidence of record, viewed as a whole, does not support a finding that the beneficiary is a leading national or international entertainment personality.

Not discussed in the director's decision is the petitioner's stated intent to employ the beneficiary as a "dance/language instructor." Counsel, on appeal, contends that this employment offer is permanent. What recognition the beneficiary has earned has been as an actress or performer; there is no indication that she has

achieved any acclaim as a dance/language instructor. Therefore, the question arises as to whether the alien seeks to enter the United States to continue work in the area of claimed extraordinary ability, as required by section 203(b)(1)(A)(ii) of the Act. As noted above, the beneficiary has not attracted any significant attention as a performer since entering the United States in early 1997.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished herself as an entertainer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the beneficiary has earned some recognition in her field, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field, as the law requires. The petitioner has not shown that the beneficiary seeks to continue working as an entertainer, or that she exhibits extraordinary ability as a dance/language instructor. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.